

*City of Bainbridge Island*  
**PLANNING & COMMUNITY DEVELOPMENT**



## **MEMORANDUM**

TO: City Council  
City Manager Doug Schulze

FROM: Kathy Cook, Planning Director

DATE: June 26, 2014

RE: Public Hearing on Ordinance No. 2014-04, City's Shoreline Master Program Update - July 14, 2014

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The City Council is scheduled to conduct the final public hearing on the City's Shoreline Master Program (SMP) Update on July 14, 2014. In accordance with the City's noticing requirements, a notice of the public hearing will be published three times in *The Review*, on June 27, July 4 and July 11, 2014. The purpose of this memo is to summarize the content of the material prepared for the public hearing, the Department of Ecology's (Ecology) required revisions and the scope of the public hearing.

### **Department of Ecology's Letter of Conditional Approval**

On June 24, 2014, the City received a letter of conditional approval for the City's Shoreline Master Program Update, signed by Maia D. Bellon, Director of the Ecology (Ecology). Receipt of this letter indicates that Ecology has completed its review of the City's SMP Update and finalized the list of required and recommended changes. Pursuant to RCW 90.58.090 (2)(e), the City may either agree to the proposed changes, or submit a proposal for alternative language. Final Ecology approval will come when the City and Ecology agree on the final Ecology changes or proposed alternative language.

Director Bellon's letter of conditional approval is attached to this staff memo, and includes the following material:

- **Attachment A:** Findings and conclusions that support Ecology's decision to issue a conditional letter of approval.
- **Attachment B:** Ecology's **required** changes to the SMP Update, with an explanation of the rationale for the required changes. **Please note that the City Council reviewed the required changes 1 through 45 at previous meetings; only 46 through 51 are new.**
- **Attachment C:** Ecology's **recommended** changes to the SMP Update, with a rationale for the recommended changes.
- **Attachment D:** Ecology's response to public comments received during the 30-day Ecology public comment period (July 22 through August 23, 2013).
- **Attachment E:** "Literature Cited in SMP Update Background Documents." This is a list of the scientific references used in the development of the City's SMP Update, in addition to the Herrera report prepared for the City, "Buffer Recommendation Memorandum." (Appendix C to the SMP Update document).

## **Ordinance 2014-04 and Exhibits**

Ordinance 2014-04 adopts the City of Bainbridge Island Shoreline Master Program Update, including adopting the revised shoreline designations map and amending goals, policies and regulations. This Ordinance also amends shoreline-related goals and policies of the Comprehensive Plan; amends Chapters 2.14 and 2.16 of the Bainbridge Island Municipal Code; amends Chapters 18.12 and 18.36 of the Bainbridge Island Municipal Code; repeals Chapter 16.12 of the Bainbridge Island Municipal Code and adopts a substitute Chapter 16.12 in its place. These Exhibits to Ordinance 2014-04 are included as follows:

- **Exhibit 1:** The revised, updated Shoreline Master Program, including the revised shoreline designations map. The document includes Ecology's required/recommended revisions and staff's proposed alternative language and clarifications that were accepted by the Council on November 20, 2013, as well as minor typographical corrections identified in April 2014. **Please note that Ecology's required changes incorporated in Exhibit 1 include changes 1 through 7; 9 and 10; 12; 13 through 15; 16 partially; 17 through 21; 23 and 24.** Since the Council last saw this document, staff also corrected the pagination on the Table of Contents and updated the title page. Because the Council had not taken public comment on the proposed revisions or voted to accept them, Exhibit 1 does not include Ecology's required revisions that were discussed at the workshops on March 24 or April 28, or the new revisions included with the Ecology Director's conditional letter of approval received on June 24, 2014.
- **Exhibit 2:** Amendments to the Comprehensive Plan for consistency with the SMP Update, including amending Policy W6.5 of the Land Use Element; adding a new section to the Environmental Element; amending Policy WMP 2-3.8 of the Land Use Chapter to the Winslow Master Plan; adding new Policy WMP 2-6 to the Land Use Chapter of the Winslow Master Plan; and amending Policy 2-10.2 of the Land Use Chapter of the Winslow Master Plan.
- **Exhibit 3:** Amendments to Chapter 2.14 (*Land Use Approvals*) and Chapter 2.16 (*Land Use Procedures*) of the Bainbridge Island Municipal Code for consistency with the SMP Update.
- **Exhibit 4:** Amendments to Chapter 18.12 (*Dimensional Standards*) and Chapter 18.36 of the Bainbridge Island Municipal Code, to delete sections pertaining to shoreline structure setbacks. These regulations have been relocated to the SMP regulations section, where all of the other shoreline dimensional regulations are located.

## **City Council SMP Review Activities—Ecology's Required/Recommended Changes**

1. On November 20, 2013, the City Council conducted a public hearing on Ordinance 2013-34 (now Ordinance 2014-04), which would adopt the Shoreline Master Program Update, other associated sections of the Municipal Code, and sections of the Comprehensive Plan. At the November meeting, the Council reviewed and took comment on the non-substantive language amendments and internal inconsistencies corrected by staff prior to the submittal of the draft SMP Update to Ecology on

June 7, 2013; the required and recommended changes that were received from Ecology (transmitted on October 16, October 25, November 15, 2013); and staff's proposed alternative language for some of Ecology's changes. The Council deliberated and then voted to authorize the City Manager to submit a letter to the Department of Ecology, outlining the City Council's acceptance of Ecology's required/recommended changes or proposed alternative language.

2. The Council also voted to schedule a final public hearing for December 11, 2013. The final public hearing was subsequently cancelled, because the City learned there would be additional changes from Ecology.

3. The Department of Ecology transmitted additional required changes to the City on February 7 and March 17, 2014, and the City conducted a workshop on these additional changes on March 24, 2014. The majority of these new changes pertained to the aquaculture policies and regulations contained in Section 5.2 of the draft SMP Update. There were also some changes to BIMC Title 2 (*Administration, Personnel and Land Use Procedures*) that were of a "housekeeping" nature to ensure consistency with WAC and RCW provisions.

4. At the March 24, 2014 workshop, the Council reviewed and discussed Ecology's required revisions to the policies and regulations, with Cedar Bouta and Barbara Nightingale from Ecology in attendance to answer questions. Upon conclusion of the workshop, the Council requested that a follow-up workshop be scheduled, and that staff bring back additional information on two of the required aquaculture changes and on revisions to language in the SMP Update that pertain to minor and major Conditional Use Permits.

5. The follow-up workshop was conducted on April 28, 2014. At Ecology's recommendation, the Council postponed further action until receipt of Ecology's signed letter of conditional approval.

6. The conditional letter of approval signed by Ecology Director Maia Bellon was received by the City on June 24, 2014. It includes a matrix showing all of Ecology's required revisions (Exhibit 2). Please note that the City Council has seen required changes 1-45 at previous meetings. The matrix includes six new revisions that the Council and community have not seen before, pertaining to policies and regulations related to public access requirements for public entities to ensure consistency with WAC provisions, and to policies and regulations related to dock prohibitions in areas with physical limitations.

#### **Reviewing the Revisions Required by Ecology and Received in 2014**

The revised, updated Shoreline Master Program is included as Exhibit 1 to Ordinance 2014-04. It includes the Ecology's revisions, staff's recommended alternative language, and staff's corrections that were approved by the Council on November 20, 2013. Because the Council had not taken public comment on the proposed revisions or voted to accept them, Exhibit 1 does not include Ecology's required revisions that were discussed at the workshops on March 24 or April 28, 2014 or the new revisions included with the Ecology Director's conditional letter of approval received on June 24, 2014. These revisions are shown in Ecology's matrix, along with all previous required revisions. To facilitate review for the July 14, 2014 public hearing, staff is also providing the revisions (not included in Exhibit 1) in context as follows:

- Revisions to aquaculture policies and regulations contained Section 5.2 (*Aquaculture*) of the draft SMP Update, shown in strikeout/underline: **Changes 8, 11, 14, 16 as numbered in the Ecology matrix--refer to Attachment F(a).**

- Revisions to aquaculture definitions contained in SMP Section 8.0 (*Definitions*) shown in strikeout/underline. **Change 30 as numbered in the Ecology matrix—refer to Attachment F(b).**
- All revisions made to Section 5.2 (*Aquaculture*) of the draft SMP Update, shown in strikeout/underline, including those approved at the November 20, 2013 public hearing. Staff is providing this additional information because the majority of Ecology’s required changes are in the aquaculture section. **Refer to Attachment F(c) to this memo.**
- Revisions to SMP Section 3.2.3 (*Management Policies - Shoreline Residential Conservancy*) shown in strikeout/underline. **Change 28 in the Ecology matrix—refer to Attachment G.**
- Revisions to three sections of the SMP shown in strikeout/underline Section 4.2.1.8 (*Regulations - Existing Residential and Commercial: Aquatic Structures and Accessory Aquatic Structures*); Section 6.2.5 (*Regulations – General*); and Section 6.2.8.3 (*Specific Regulations for the Point Monroe District*). Ecology is requiring that the references to “major” and “minor” conditional uses be deleted, because the State Shoreline Management Act does not recognize major or minor conditional uses. This does not mean that the City cannot have a major/minor permitting process, but rather that references to such a process should be contained within BIMC Title 2 (*Land Use Procedures*). **Changes 43-45 as numbered in the Ecology matrix--refer to Attachment H.**
- Revisions to SMP Section 4.1.5 (*Critical Areas*) shown in strikeout/underline. **Changes 25-27 as numbered in the Ecology matrix—refer to Attachment I.**
- Revisions to SMP Table 4.1(*Shoreline Use and Modification Activity Matrix*) shown in strikeout/underline. **Change 29 in the Ecology matrix—refer to Attachment J.**
- All other revisions received as part of Ecology’s conditional letter of approval, June 24, 2014, including policies and regulations related to public access requirements for public entities to ensure consistency with WAC provisions, and to policies and regulations related to dock prohibitions in areas with physical limitations. **Changes 47-51 as numbered in the Ecology matrix—refer to Attachment K.**
- Revisions to new BIMC Section 2.16.165 (*Shoreline Master Program Administration*) shown in strikeout/underline **Changes 31-42 as numbered in the Ecology matrix--refer to Exhibit 3.**

### **Scope of the July 14, 2014 Public Hearing**

The City Council will take public comment on all components of Ordinance 2014-04 as described above. Public comment will also be taken on the Department of Ecology’s required and recommended changes to the Shoreline Master Program Update that were provided to the City on October 16, October 25 and November 15, 2013 and presented at a public hearing on November 20, 2013; and at two City Council workshops conducted on March 24 and April 28, 2014. The majority of these changes are to the goals and policies related to Aquaculture General Regulations, Aquaculture Activities, Aquaculture Design Standards and Aquaculture Operational Standards, and are intended to ensure consistency with state and federal law and with the Department of Ecology’s SMP Guidelines. Ecology is also requiring changes to clarify the scope and applicability of the Shoreline Management Act and

Shoreline Master Program on Bainbridge Island, as well as some changes to BIMC Title 2 (*Administration, Personnel and Land Use Procedures*) to ensure consistency with WAC and RCW provisions.

Public comment will also be taken on the final set of required changes received from Ecology on June 24, 2014, pertaining to policies and regulations related to public access requirements for public entities to ensure consistency with WAC provisions, and to policies and regulations related to dock prohibitions in areas with physical limitations.

### **Council Action at the July 14, 2014 Public Hearing**

Upon close of public testimony and Council's deliberations at the July 14, 2014 public hearing, staff recommends that the City Council discuss the public testimony and Ecology's requested and recommended revisions and then vote on whether to authorize the City Manager to submit a letter to Ecology, outlining Council's acceptance of Ecology's required/recommended changes or proposed alternative language.

### **Final Letter of Approval**

Once the City formally accepts Ecology's conditions of approval, Ecology will then send the City a final letter of approval, and the City's SMP Update becomes state law fourteen (14) days from the date of Ecology's letter.

### **Attachments**

- Attachment A:** Ecology's Findings and Conclusions
- Attachment B:** Ecology's required changes to the SMP Update
- Attachment C:** Ecology's recommended changes to the SMP Update
- Attachment D:** Ecology's response to public comments
- Attachment E:** "Literature Cited in SMP Update Background Documents"
- Attachment F:** Revisions to Aquaculture Policies, Regulations, Definitions
- Attachment G:** Revisions to SMP Section 3.2.3 *Management Policies*
- Attachment H:** Revisions pertaining to major/minor permitting processes
- Attachment I:** Revisions to SMP Section 4.1.5, *Critical Areas*
- Attachment J:** Revisions to SMP Table 4.1, *Shoreline Use and Modification Activity Matrix*
- Attachment K:** Other revisions received with Ecology's conditional letter of approval, June 24, 2014

### **Exhibits**

- Exhibit 1:** Updated Shoreline Master Program, with new shoreline designations map
- Exhibit 2:** Amendments to the Comprehensive Plan
- Exhibit 3:** Amendments to BIMC Chapter 2.14 *and* Chapter 2.16, with additional DOE required changes
- Exhibit 4:** Amendments to BIMC Chapter 18.12